State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -

PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 12/04/2005 (Per: JTK)

Appendix A ... Part 04 of 16

☞ The 2005 drafting file for LRB 05–2978/**11**

has been copied/added to the 2005 drafting file for

LRB 05–3956 (SB 426)

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

2005 **Date (time) needed** DNOTES Wed 7/27 LRB - 2978 / 1

BILL JTK : WLJ :

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] ***to repeal*** . . . ; ***to renumber*** . . . ; ***to consolidate and renumber*** . . . ; ***to renumber and amend*** . . . ; ***to consolidate, renumber and amend*** . . . ; ***to amend*** . . . ; ***to repeal and recreate*** . . . ; and ***to create*** . . . of the statutes; **relating to:** various changes in the unemployment insurance insurance law and providing penalties.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:
For the main heading, execute: . . . . . **create → anal: → title: → head**
For the subheading, execute: . . . . . **create → anal: → title: → sub**
For the sub–subheading, execute: . . . . . **create → anal: → title: → sub–sub**
For the analysis text, in the component bar:
For the text paragraph, execute: . . . . . **create → anal: → text**

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #.

This bill makes various changes in the unemployment insurance law. Significant provisions include:

BENEFIT CHANGES

Determination of wages for purposes of partial unemployment benefits

Under current law, with certain exceptions, if a claimant earns wages in a given week in employment covered by the unemployment insurance law, the first $30 of the wages are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of the remaining amount of wages earned. However, any amount that a claimant earns for services performed as a volunteer fire fighter, volunteer emergency medical technician, or volunteer first responder in any week does not reduce the claimant's benefit payment for that week. This bill discontinues the exclusion of amounts earned for volunteer fire fighter, volunteer emergency medical technician, and volunteer first responder services from partial unemployment benefit calculation. The bill also provides that wages earned in work not covered by the unemployment insurance law are included ~~together~~ with other wages in calculating benefit reductions for partial unemployment benefits.

Benefit reductions due to certain suspensions, terminations and leaves

Currently, if an employee is suspended from his or her employment, or if an employee is terminated by his or her employer because the employee is unable to do, or unavailable for, suitable work otherwise available with the employee's employer, or if an employee is granted family or medical leave the employee is ineligible for benefits for the week in which the suspension or termination occurs or the leave begins. This bill provides instead that an employee who is suspended or terminated due to unavailability for work or an employee who is granted family or medical leave is only ineligible to receive benefits for the portion of the week after which a suspension or termination occurs.

Self–employment disqualification

Currently, an individual who is self–employed is not eligible for benefits for any week in which the individual has worked at the self–employment unless the individual establishes to the satisfaction of DWD (the Department of Workforce Development) that he or she has made an active and bona fide search for employment. Claimants who are not self–employed are exempted from requirements to search for work if they are laid off by an employer and have a reasonable expectation of reemployment with the same employer. This bill deletes the self–employment disqualification, thereby making individuals who work at their self–employment eligible for benefits on the same basis as other claimants.

Voluntary termination of work

Currently, if an employee voluntarily terminates his or her work with an employer, the employee is generally ineligible to receive benefits until 4 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least four times the employee's weekly benefit rate in employment covered by the

unemployment insurance law of any state or the federal government. However, an employee may terminate his or her work and receive benefits without requalifying under this provision if the employee terminates his or her work with good cause attributable to his or her employer. In addition, an employee may voluntarily terminate his or her work and receive benefits without requalifying under this provision if the employee is transferred by his or her employer to work paying less than two–thirds of his or her immediately preceding wage rate with that employer, except that the employee is ineligible to receive benefits for the week of termination and the four next following weeks. This bill deletes the latter exception. Under the bill, if an employee's wages are substantially reduced by his or her employer, the employee may still be able to voluntarily terminate his or her employment and claim benefits without requalifying or waiting, if it is determined that the wage reduction constitutes good cause attributable to the employee's employer.

Employee status

Currently, ~~in order~~ to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee" as defined in the unemployment insurance law. Generally, an "employee" is an individual who performs services for an employer covered by the unemployment insurance law, whether or not ~~the individual is directly paid by~~ the employer directly pays the individual. However, an individual is not an "employee" if the individual owns a business that operates as a sole proprietorship or if the individual is a partner in a business that operates as a partnership. This bill provides that these exclusions apply only with respect to services performed for a sole proprietorship or partnership, respectively.

TAX CHANGES

Uncollectible reimbursable benefits

Currently, an employer that is a nonprofit organization may, in lieu of paying regular contributions (taxes) to the unemployment reserve fund, elect to reimburse the fund for the cost of benefits charged to its account. If a nonprofit organization that has elected reimbursement financing fails to reimburse the fund for the cost of benefits charged to its account and DWD is unable to collect the amount due, together with any interest and penalties, the fund must absorb these costs. Employers that elect reimbursement financing do not contribute to the payment of these costs. This bill provides that if, as of June 30 of any year, there is more than a total of $5,000 due from nonprofit organizations for reimbursements of benefits paid on their behalf that DWD has determined to be uncollectible, DWD must assess all employers that are nonprofit organizations, except Indian tribes, for these costs, but shall not assess more than a total of $200,000 in any single year. Under the bill, assessments are applied by DWD to each employer's taxable payroll for unemployment insurance purposes at a rate determined by DWD to be sufficient to reimburse the fund for uncollectible reimbursements paid on behalf of employers that are nonprofit organizations.

Treatment of professional employer organizations

Currently, an employer is generally liable for contributions (taxes) or benefit reimbursements based on an individual's employment if the individual is subject to

the employer's direction or control over the performance of the individual's services. However, if an individual performs services for a client of a professional employer organization under a contract, the organization is liable for contributions or benefit reimbursements based on those services under certain specified conditions. Currently, a "professional employer organization" is an organization that contracts to provide the nontemporary, ongoing workforce of a client. Under this bill, an organization may qualify as a "professional employer organization" only if it contracts to provide the nontemporary, ongoing workforce of more than one client, and the majority of the organization's clients are not under the same ownership, management or control as the organization, other than through the terms of the contract.

OTHER CHANGES

Electronic reporting

Currently, employers must file separate quarterly reports of contributions and wages with DWD. Employer agents that file contribution reports on behalf of 25 or more employers must file the reports using an electronic medium approved by DWD. Employers that employ 100 or more employees must also file quarterly wage reports using an electronic medium approved by DWD. This bill requires each employer of 50 or more employees that does not use an employer agent to file its contribution reports to file those contribution reports electronically using the Internet on a form prescribed by DWD. The bill requires each employer agent that files contribution reports on behalf of less than 25 employers to file those reports electronically using the Internet on a form prescribed by DWD. The bill requires all employer agents to file all wage reports electronically using the Internet on a form prescribed by DWD. The bill also requires employers of 50 or more employees to file wage reports using an electronic medium approved by DWD. In addition, the bill makes an employer that is required to file its contribution reports electronically liable for a penalty of $25 for each report that is not filed electronically in the form prescribed by DWD.

Successorship

Currently, if a business is transferred from one employer to another employer, the transferee may, under certain conditions, request that DWD treat it as a successor to the transferor for purposes of unemployment insurance experience, including contribution (tax) and benefit liability. DWD must treat the transferee as the successor to the transferor if the transferor and transferee are owned or controlled by the same interests. When a transferee is treated as a successor to a transferor, the contribution rates of the transferor and transferee are recomputed effective on January 1 of the year following the transfer. This bill requires DWD to treat the transferee as the successor to the transferor if the transferor and transferee are owned, controlled *or managed* by the same interests. The bill also requires recomputation of the transferor's and transferee's contribution rates effective on the date of the transfer. The bill permits DWD to nullify a successorship if it finds that a substantial purpose of a business transfer was to obtain a reduced contribution rate for the transferee. In addition, the bill provides for punitive increases in contribution rates for employers, and creates both civil and criminal misdemeanor penalties for other persons, who knowingly make or attempt to make a false statement or

representation to DWD in connection with an investigation to determine whether an employer qualifies to be considered a successor to the transferor of a business.

Coverage of certain AmeriCorps employees

Currently, employees performing services for the federal AmeriCorps program are generally covered under the unemployment insurance law. This bill eliminates coverage for those services, except for services performed as a part of a professional corps program in which a public or private nonprofit employer pays the entire salaries of the employees. Under the bill, employers that provide these services are no longer subject to contribution requirements (the requirement to pay taxes) based upon these services and claimants are no longer eligible to claim benefits based upon the performance of these services.

Issuance of warrants against certain individuals

Currently, under certain conditions, an individual who holds at least 20 percent of the ownership interest in a corporation or limited liability company may be found to be personally liable for unemployment insurance liabilities of the corporation or company. Currently, if an employer has delinquent unemployment insurance liabilities, DWD may issue a warrant and file it with the clerk of circuit court for any county where real or personal property of the employer is found. The warrant constitutes a lien upon the property and is subject to execution through sale of the property. This bill provides that DWD may issue a warrant for the collection of any unemployment insurance liabilities for which an individual is found to be personally liable.

Treatment of limited liability companies

Currently, DWD treats a limited liability company as a corporation if the company files an election with the federal internal revenue service to be so treated for federal tax purposes and files proof with DWD that the internal revenue service has agreed to so treat the company. The change may affect the taxation of the wages paid to principal officers of the company and their eligibility for benefits. For benefit purposes, a change is effective on the same date that the internal revenue service agrees to treat the company as a corporation or the date that proof of such treatment is filed with DWD, whichever is later. Under this bill, a change applies to benefit years (periods during which benefits are potentially payable) in existence on or beginning on or after the date that the federal internal revenue service treats the company as a corporation for federal tax purposes if the benefit year to which the treatment is to be applied has not ended on the date that the company files proof of the federal treatment.

Enforcement of assessments against imposters

Currently, if any person makes a false statement or representation in order to obtain benefits in the name of another person, DWD may, by administrative action or by decision in an administrative proceeding, require the person to repay the benefits and may also penalize the person by levying an assessment against him or her in an amount not greater than 50% of the benefits wrongfully obtained. One of the ways by which DWD may collect such an assessment is to offset the amount of the assessment against any benefits that would otherwise be payable to the person.

This process is called recoupment. This bill deletes this the authority of DWD to collect these assessments by means of recoupment.

Charging of certain benefits for claimants enrolled in approved training

Currently, if a claimant who is enrolled in employment–related training approved by DWD is paid benefits for which the claimant would otherwise be ineligible because the claimant has terminated his or her work or failed to accept suitable work or recall to work and is unable to work or unavailable for work or has failed to meet work search requirements, the costs of the benefits is charged to the balancing account of the unemployment reserve fund (which is financed from contributions of all employers that are subject to a requirement to pay contributions) instead of to the account or accounts of the claimant's employer or employers. This bill applies this noncharging procedure only with respect to an employer from which the claimant terminated his or her work or refused to accept a recall to work.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

INS 4A

Failure of employers to provide information

Currently, if benefits are erroneously paid because an employer fails to provide correct and complete information on a report to DWD, any benefits that DWD recovers do not affect charges to the employer's account for the cost of those benefits. The bill provides, in addition, that during the period beginning on January 1, 2006, and ending on June 28, 2008, if benefits are erroneously paid because an employer fails to provide correct and complete information requested by DWD during a fact–finding investigation, but the employer later provides the requested information, charges to the employer's account for the cost of benefits paid before the end of the week in which a redetermination or an appeal tribunal decision is issued concerning benefit eligibility are not affected by the redetermination or decision.

SECTION 1. 108.02 (12) (a) of the statutes is amended to read:

108.02 **(12)** (a) "Employee" means any individual who is or has been performing services for pay for an employing unit, ~~in an employment,~~ whether or not the individual is paid directly by ~~such~~ the employing unit; except as provided in par. (b), (bm), (c), (d), (dm) or (dn).

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197.

SECTION 2. 108.02 (12) (dm) of the statutes is amended to read:

108.02 **(12)** (dm) Paragraph (a) does not apply to an individual who owns a business that operates as a sole proprietorship with respect to services performed for that business.

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197.

SECTION 3. 108.02 (12) (dn) of the statutes is amended to read:

108.02 **(12)** (dn) Paragraph (a) does not apply to a partner in a business that operates as a partnership with respect to services performed for that business.

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197.

SECTION 4. 108.02 (21e) (intro.) of the statutes is amended to read:

108.02 **(21e)** PROFESSIONAL EMPLOYER ORGANIZATION. (intro.) "Professional employer organization" means any person who contracts to provide the nontemporary, ongoing employee workforce of ~~a client~~ more than one client under a written leasing contract, the majority of whose clients are not under the same ownership, management or control as the person other than through the terms of the contract, and who under contract and in fact:

Move to next page, after CR; 108.02 (15)(j.) 7.

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197.

SECTION 5. 108.02 (15) (j) 5. and 6. of the statutes are amended to read:

108.02 **(15)** (j) 5. In any quarter in the employ of any organization exempt from federal income tax under section 501 (a) of the internal revenue code, other than an organization described in section 401 (a) or 501 (c) (3) of such code, or under section 521 of the internal revenue code, if the remuneration for such service is less than $50; ~~or~~

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197.

6. By a nonresident alien for the period that he or she is temporarily present in the United States as a nonimmigrant under 8 USC 1101 (a) (15) (F), (J), (M), or (Q), if the service is performed to carry out the purpose for which the alien is admitted to the United States, as provided in 8 USC 1101 (a) (15) (F), (J), (M), or (Q), or by the spouse or minor child of such an alien if the spouse or child was also admitted to the United States under 8 USC 1101 (a) (15) (F), (J), (M), or (Q) for the same purpose. ~~.~~ ; or

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197.

SECTION 6. 108.02 (15) (j) 7. of the statutes is created to read:

108.02 **(15)** (j) 7. By an individual who is a participant in the AmeriCorps program, except service performed pursuant to a professional corps program as described in 42 USC 12572 (a) (8).

SECTION 7. 108.04 (1) (b) 1. of the statutes is amended to read:

108.04 **(1)** (b) 1. While the employee is unable to work, or unavailable for work, if his or her employment with an employer was suspended by the employee or by the employer or was terminated by the employer because the employee was unable to do, or unavailable for, suitable work otherwise available with the employer, except as provided in par. (c);

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 8. 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

108.04 **(1)** (b) 3. While the employee is on family or medical leave under the federal family and medical leave act of 1993 (P.L. 103–3) or s. 103.10, and until whichever of the following occurs first, except as provided in par. (c):

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 9. 108.04 (1) (c) of the statutes is amended to read:

108.04 **(1)** (c) If a leave of absence under par. (b) 2. or a family or medical leave under par. (b) 3. is granted to an employee for a portion of a week, or if an employee is absent for only a portion of the available work in a week due to a suspension under par. (b) 1. or a termination under par. (b) 2. that occurs after the beginning of a week, the employee's eligibility for benefits for that partial week shall be reduced by the amount of wages that the employee could have earned in his or her work had the leave not been granted or had the suspension or termination not occurred. For purposes of this paragraph, the department shall treat the amount the employee would have earned as wages in that work for that week as wages earned by the employee and shall apply the method specified in s. 108.05 (3) (a) to compute the benefits payable to the employee. The department shall estimate the wages that an employee would have earned for a partial week if it is not possible to compute the exact amount of wages that the employee would have earned for that partial week.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 10. 108.04 (1) (e) of the statutes is repealed.

SECTION 11. 108.04 (7) (f) of the statutes is repealed.

SECTION 12. 108.04 (16) (b) of the statutes is amended to read:

108.04 **(16)** (b) The department shall not apply any benefit disqualification under sub. (1) (b) 1., ~~(2) (a) or (d),~~ (7) (c), or (8) (e) or s. 108.141 (3g) that is not the

result of training or basic education under par. (a) while an individual is enrolled in a course of training or education that meets the standards specified in par. (a).

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 13. 108.04 (16) (c) 2. of the statutes is amended to read:

108.04 **(16)** (c) 2. The department shall not apply benefit disqualifications under sub. (1) (b) 1., ~~(2) (a) or (d),~~ (7) (c), or (8) (e) or s. 108.141 (3g) that are not the result of the training while the individual is enrolled in the training.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 14. 108.05 (3) (a) of the statutes is amended to read:

108.05 **(3)** (a) Except as provided in pars. (b) and (c), if an eligible employee earns wages in a given week, the first $30 of the wages shall be disregarded and the employee's applicable weekly benefit payment shall be reduced by 67% of the remaining amount, except that no such employee is eligible for benefits if the employee's benefit payment would be less than $5 for any week. For purposes of this paragraph, "wages" includes any salary reduction amounts earned that are not wages and that are deducted from the salary of a claimant by an employer pursuant to a salary reduction agreement under a cafeteria plan, within the meaning of 26 USC 125, and any amount that a claimant would have earned in available work which is treated as wages under s. 108.04 (1) (a)~~, but excludes any amount that a claimant earns for services performed as a volunteer fire fighter, volunteer emergency medical technician or volunteer first responder~~. In applying this paragraph, the department shall disregard discrepancies of less than $2 between wages reported by employees and employers.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105; 2003 a. 197.

SECTION 15. 108.068 (2) of the statutes is amended to read:

108.068 **(2)** The department shall treat a limited liability company that files proof under sub. (1) as a corporation under this chapter beginning on the same date that the federal internal revenue service treats the company as a corporation for federal tax purposes, except that for benefit purposes the treatment shall apply ~~on the same date that the internal revenue service applies the treatment or the date that proof is filed with the department, whichever is later~~ to benefit years in existence on or beginning on or after the date that the federal internal revenue service treats the company as a corporation for federal tax purposes if the benefit year to which the treatment is to be applied has not ended on the date that the company files proof under sub. (1).

History: 2003 a. 197.

SECTION 16. 108.09 (2) (bm) of the statutes is amended to read:

108.09 **(2)** (bm) In determining whether an individual meets the conditions specified in s. 108.02 (12) (b) 2. a. or b. ~~or~~ (bm) ~~1. or 2.~~ 3. or 4. or (c) 1., the department shall not consider documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.

History: 1971 c. 147; 1973 c. 247; 1975 c. 343; 1977 c. 29, 418; 1979 c. 52, 221; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38 ss. 81 to 86, 136; 1989 a. 56 s. 259; 1989 a. 77; 1991 a. 89, 269; 1993 a. 373; 1995 a. 118; 1997 a. 35, 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

SECTION 17. 108.09 (4s) of the statutes is amended to read:

108.09 **(4s)** EMPLOYEE STATUS. In determining whether an individual meets the conditions specified in s. 108.02 (12) (b) 2. a. or b. ~~or~~ (bm) ~~1. or 2.~~ 3. or 4. or (c) 1., the appeal tribunal shall not take administrative notice of or admit into evidence documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.

History: 1971 c. 147; 1973 c. 247; 1975 c. 343; 1977 c. 29, 418; 1979 c. 52, 221; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38 ss. 81 to 86, 136; 1989 a. 56 s. 259; 1989 a. 77; 1991 a. 89, 269; 1993 a. 373; 1995 a. 118; 1997 a. 35, 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

SECTION 18. 108.151 (4) (b) of the statutes is amended to read:

108.151 **(4)** (b) The fund's treasurer shall issue a receipt to the employer for its deposit of assurance. Any assurances shall be retained by the fund's treasurer in escrow, for the fund, until the employer's liability under its election is terminated, at which time they shall be returned to the employer, less any deductions made under this paragraph. The employer may at any time substitute assurances of equal or greater value. The treasurer may, with 10 days' notice to the employer, liquidate the assurances deposited to the extent necessary to satisfy any delinquent reimbursements or assessments due under this section together with any interest and any tardy filing fees due. The treasurer shall hold in escrow any cash remaining from the sale of the assurances, without interest. The fund's treasurer shall require the employer within 30 days following any liquidation of deposited assurances to deposit sufficient additional assurances to make whole the employer's deposit at the prior level. Any income from assurances held in escrow shall inure to and be the property of the employer.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1979 c. 52; 1983 a. 8; 1985 a. 17; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1995 a. 118; 1999 a. 15.

SECTION 19. 108.151 (7) of the statutes is created to read:

108.151 **(7)** UNCOLLECTIBLE REIMBURSEMENTS. (a) Except as provided in par. (e), each employer that has elected reimbursement financing under this section and that is subject to this chapter as of the date that a rate of assessment is established under this subsection shall pay an assessment to the fund at a rate established by the department under par. (b).

(b) The fund's treasurer shall determine the total amount due from employers electing reimbursement financing under this section that is uncollectible as of June 30 of each year. No amount may be treated as uncollectible under this paragraph unless the department has exhausted all reasonable remedies for collection of the

amount, including liquidation of the assurance required under sub. (4). The department shall charge the total amounts so determined to the uncollectible reimbursable benefits account under s. 108.16 (6w). Whenever as of June 30 of any year this account has a negative balance of $5,000 or more, the treasurer shall determine the rate of an assessment to be levied under par. (a) for that year, which shall then become payable by all employers that have elected reimbursement financing under this section as of that date.

(c) The rate of assessment under this subsection for each calendar year shall be a rate, when applied to the payrolls of all employers electing reimbursement financing under this section for the preceding calendar year, that will generate an amount that, when added to any positive balance remaining in the uncollectible reimbursable benefits account under s. 108.16 (6w), equals to the total amount determined to be uncollectible under par. (b), but not more than $200,000 for any year.

(d) Except as provided in par. (e), the rate of each employer's assessment under this subsection for any calendar year is the product of the rate determined under par. (c) multiplied by the employer's payroll for the preceding calendar year, as reported by the employer under s. 108.17 (2) or, in the absence of reports, as estimated by the department.

(e) If any employer would otherwise be assessed an amount less than $10 for a calendar year, the department shall, in lieu of requiring that employer to pay an assessment for that calendar year, apply the amount that the employer would have been required to pay to the other employers on a pro rata basis.

(f) The department shall bill assessments to employers under this subsection in the same manner as provided in sub. (5) (f) for the month of September in each year.

and the assessment is due for payment in the same manner as other payments under sub. (5) (f). If any assessment is past due, the department shall assess interest on the balance due under s. 108.22. If any employer is delinquent in paying an assessment under this subsection, the department may terminate the employer's election of reimbursement financing under this section as of the close of any calendar year in which the employer remains delinquent.

SECTION 20. 108.16 (6w) and (6x) of the statutes are created to read:

108.16 **(6w)** The department shall maintain within the fund an uncollectible reimbursable benefits account to which the department shall credit all amounts assessed to employers under s. 108.151 (7).

(6x) The department shall charge to the uncollectible reimbursable benefits account the amount of any benefits paid from the balancing account that are reimbursable under s. 108.151 but for which the department does not receive reimbursement after the department exhausts all reasonable remedies for collection of the amount.

SECTION 21. 108.16 (8) (e) 1. of the statutes is amended to read:

108.16 **(8)** (e) 1. At the time of business transfer, the transferor and the transferee are owned, managed or controlled in whole or in substantial part, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests. Without limitation by reason of enumeration, it is presumed unless shown to the contrary that the "same interest or interests" includes the spouse, child or parent of the individual who owned or controlled the business, or any combination of more than one of them.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 22. 108.16 (8) (em) of the statutes is created to read:

108.16 **(8)** (em) If, after the transferee of a business has been deemed a successor under par. (e), the department determines that a substantial purpose of the transfer of the business was was to obtain a reduced contribution rate, then the department shall treat the transfer as having no effect for purposes of this chapter and shall, retroactively to the date of the transfer, reassign to the transferor all aspects of the transferor's account experience and liability that had been assigned to the transferee, together with all aspects of the transferee's account experience related to the transferred business, and shall recompute the transferor's contribution rate as provided in par. (h).

SECTION 23. 108.16 (8) (h) of the statutes is amended to read:

108.16 **(8)** (h) The department shall determine or redetermine the contribution ~~rate for a successor subject to this chapter immediately prior to the date of the transfer shall be redetermined, as of the applicable computation date, to apply to the calendar year following the date of transfer and~~ rates for the transferor and the successor as of the date of the transfer of the business. The rates shall apply beginning on that date and shall thereafter be redetermined whenever required by s. 108.18. For the purposes of s. 108.18, the department shall determine the experience under this chapter of the successor's account by allocating to the successor's account for each period in question the respective proportions of the transferor's payroll and benefits which the department determines to be properly assignable to the business transferred.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 24. 108.16 (8) (im) of the statutes is created to read:

108.16 **(8)** (im) Notwithstanding pars. (b) to (i), a transferee who is not subject to this chapter on the date of transfer of a business shall not be deemed a successor

to the transferor if the department determines that the transfer occurred solely or primarily for the purpose of obtaining a lower contribution rate for the transferee than the rate that would otherwise apply if the transferee were deemed a new employer. In determining whether a business was transferred solely or primarily for the purpose of obtaining a lower contribution rate for the transferee than the rate that would otherwise apply, the department shall use objective factors, which may include the cost of acquiring the business, whether the transferee continued the business enterprise of the transferred business, the length of time that the business enterprise was continued, or whether a substantial number of new employees were hired for the performance of duties unrelated to the business activity conducted by the transferor prior to the transfer.

SECTION 25. 108.16 (8) (m) to (o) of the statutes are created to read:

108.16 **(8)** (m) If any person knowingly makes or attempts to make a false statement or representation to the department in connection with any investigation to determine whether an employer qualifies to be deemed a successor under par. (e) or (im) or any other provision of this chapter for the purpose of determining the assignment of a contribution rate, or if any person knowingly advises another person to do so, including by willful evasion, nondisclosure or misrepresentation, the person is subject to the following penalties:

1. If the person is an employer, then the department shall assign the employer the highest contribution rate assignable under this chapter for the year during which the violation or attempted violation occurs and the 3 succeeding years, except that if the department assigns the employer the highest contribution rate for any such year under other provisions of this chapter or if the increase in the employer's contribution rate under this subdivision would be less than 2 percent on

its payroll for any year, then the department shall increase the employer's contribution rate by 2 percent on its payroll for each year in which a penalty applies under this subdivision.

2. If the person is not an employer, the person may be required to forfeit not more than $5,000.

3. The person is guilty of a class A misdemeanor.

(n) The department shall utilize uniform procedures to identify businesses that are transferred under this subsection.

(o) Paragraphs (e) 1., (em), (h), (im) and (m) shall be interpreted and applied, insofar as possible, to meet the minimum requirements of any guidance issued by or regulations promulgated by the U.S. department of labor.

SECTION 26. 108.17 (2b) of the statutes is created to read:

108.17 **(2b)** The department shall prescribe a form and methodology for filing contribution reports under sub. (2) electronically using the Internet. Each employer of 50 or more employees, as determined under s. 108.22 (1) (ae), ~~which~~ that does not use an employer agent to file its contribution reports under this section shall file its contribution reports electronically using the Internet on the form prescribed by the department. Once an employer becomes subject to the reporting requirements under this subsection, it shall continue to file its reports under this subsection unless that requirement is waived by the department.

SECTION 27. 108.17 (2g) of the statutes is amended to read:

108.17 **(2g)** An employer agent that files reports under sub. (2) on behalf of less than 25 employers shall file those reports electronically using the Internet on the form prescribed by the department under sub. (2b). An employer agent that files reports under sub. (2) on behalf of 25 or more employers shall file those reports using

an electronic medium and format approved by the department. An employer agent that becomes subject to the reporting requirement under this subsection shall file its initial reports under this subsection for the 4th quarter beginning after the quarter in which the employer agent becomes subject to the reporting requirement. Once an employer agent becomes subject to the reporting requirement under this subsection, the employer agent shall continue to file its reports under this subsection unless that requirement is waived by the department.

History: 1973 c. 247; 1981 c. 36; 1985 a. 29; 1987 a. 38 ss. 112, 134; 1989 a. 77; 1991 a. 89; 1993 a. 492; 2001 a. 35.

SECTION 28. 108.18 (1) (a) of the statutes is amended to read:

108.18 **(1)** (a) ~~Each~~ Unless a penalty applies under s. 108.16 (8) (m), each employer shall pay contributions to the fund for each calendar year at whatever rate on the employer's payroll for that year duly applies to the employer pursuant to this section.

History: 1971 c. 42, 53, 211; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 12, 52; 1983 a. 8, 27, 99; 1983 a. 189 s. 329 (28); 1983 a. 384; 1985 a. 17, 40, 332; 1987 a. 38 ss. 113 to 121, 134; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89; 1993 a. 373, 492; 1995 a. 118, 225, 417; 1997 a. 39; 1999 a. 15; 2001 a. 43.

SECTION 29. 108.18 (2) (d) of the statutes is amended to read:

108.18 **(2)** (d) No later than 90 days after the department issues an initial determination that a person is an employer, any employer other than an employer specified in par. (c), having a payroll exceeding $10,000,000 in a calendar year may elect that its contribution rate shall be one percent on its payroll for the first 3 calendar years with respect to which contributions are credited to its account. In such case, the department shall credit the amount collected in excess of this amount against liability of the employer for future contributions after the close of each calendar year in which an election applies. If an employer qualifies for and makes an election under this paragraph, the employer shall, upon notification by the department, make a special contribution after the close of each quarter equivalent to the amount by which its account is overdrawn, if any, for the preceding quarter.

The department shall credit any timely payment of contributions to the employer's account before making a determination of liability for a special contribution under this paragraph. An employer does not qualify for an alternate contribution rate under this paragraph at any time during which the employer's special contribution payment is delinquent. An employer that is the transferee of a business enterprise but does not qualify to be treated as a successor under s. 108.16 (8) (im) does not qualify for an alternate contribution rate under this paragraph.

History: 1971 c. 42, 53, 211; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 12, 52; 1983 a. 8, 27, 99; 1983 a. 189 s. 329 (28); 1983 a. 384; 1985 a. 17, 40, 332; 1987 a. 38 ss. 113 to 121, 134; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89; 1993 a. 373, 492; 1995 a. 118, 225, 417; 1997 a. 39; 1999 a. 15; 2001 a. 43.

SECTION 30. 108.205 (1m) of the statutes is created to read:

108.205 **(1m)** The department shall prescribe a form and methodology for filing reports under sub. (1) electronically using the Internet. Each employer agent shall file its reports electronically using the Internet on the form prescribed by the department.

SECTION 31. 108.205 (2) of the statutes is amended to read:

108.205 **(2)** All employers of ~~100~~ 50 or more employees, as determined under s. 108.22 (1) (ae), shall file the quarterly report under sub. (1) using an electronic medium approved by the department for such employers. An employer that becomes subject to the reporting requirement under this subsection shall file its initial report under this subsection for the 4th quarter beginning after the quarter in which the employer becomes subject to the reporting requirement. Once an employer becomes subject to the reporting requirement under this subsection, the employer shall continue to file its quarterly reports under this subsection unless that requirement is waived by the department.

History: 1987 a. 38; 1991 a. 89; 1997 a. 39; 1999 a. 15.

SECTION 32. 108.22 (1) (ad) of the statutes is renumbered 108.22 (1) (ad) 1.

SECTION 33. 108.22 (1) (ad) 2. of the statutes is created to read:

108.22 **(1)** (ad) 2. An employer that is subject to the reporting requirement under s. 108.17 (2b) and that fails to file a contribution report in accordance with s. 108.17 (2b) may be assessed a penalty by the department in the amount of $25 for each report that is not filed in accordance with s. 108.17 (2b).

SECTION 34. 108.22 (1) (b) of the statutes is amended to read:

108.22 **(1)** (b) If the due date of a report or payment under s. 108.15 (5) (b), 108.151 (5) (f) or (7), 108.16 (8), 108.17, or 108.205 would otherwise be a Saturday, Sunday, or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday, or legal holiday under state or federal law.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

SECTION 35. 108.22 (1) (c) of the statutes is amended to read:

108.22 **(1)** (c) Any report or payment, except a payment required by s. 108.15 (5) (b) or 108.151 (5) (f) or (7), to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law or rule of the department, no later than its due date as determined under par. (b), or if mailed is either postmarked no later than that due date or is received by the department no later than 3 days after that due date. Any payment required by s. 108.15 (5) (b) or 108.151 (5) (f) or (7) is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law, no later than the last day of the month in which it is due.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

SECTION 36. 108.22 (1m) of the statutes is amended to read:

108.22 **(1m)** If an employer owes any contributions, reimbursements or assessments under s. 108.15 or 108.151, interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount

owed, the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

SECTION 37. 108.22 (2) of the statutes is amended to read:

108.22 **(2)** (a) 1. If any employing unit or any individual who is found personally liable under sub. (9) fails to pay to the department any amount found to be due it in proceedings pursuant to s. 108.10, provided that no appeal or review permitted under s. 108.10 is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state.

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the employing unit or individual mentioned in the warrant and the amount of the contributions, interest, costs and other fees for which the warrant is issued and the date when such copy is entered.

3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien upon the employing unit's or individual's

right, title and interest in all real and personal property located in the county where the warrant is entered.

4. The department or any authorized representative may thereafter file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the employing unit or individual is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the employing unit or individual to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue thereof within 60 days after receipt of the warrant.

(b) The clerk of circuit court shall accept, file and enter each warrant under par. (a) and each satisfaction, release, or withdrawal under subs. (5), (6), and (8m) in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the employing unit or individual when satisfaction or release is presented for entry.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

SECTION 38. 108.22 (8) (b) of the statutes is amended to read:

108.22 **(8)** (b) To recover any overpayment which is not otherwise repaid or recovery of which has not been waived, ~~or any assessment under s. 108.04 (11) (cm),~~ the department may recoup the amount of the overpayment from benefits the individual would otherwise be eligible to receive, or file a warrant against the liable

individual in the same manner as is provided in this section for collecting delinquent payments from employers, or both, but only to the extent of recovering the actual amount of the overpayment and any costs and disbursements, without interest.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

SECTION 39. 108.225 (1) (a) of the statutes is amended to read:

108.225 **(1)** (a) "Contribution" includes a reimbursement or assessment under s. 108.15, 108.151, or 108.152, interest for a nontimely payment, fees, and any payment due for a forfeiture imposed upon an employing unit under s. 108.04 (11) (c) or other penalty assessed by the department under this chapter.

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109; 2003 a. 197.

SECTION 40. 108.24 (2) of the statutes is amended to read:

108.24 **(2)** ~~Any~~ Except as provided in s. 108.16 (8) (m), any person who knowingly makes a false statement or representation in connection with any report or as to any information duly required by the department under this chapter, or who knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department under this chapter, shall be fined not less than $100 nor more than $500, or imprisoned not more than 90 days or both; and each such false statement or representation and every day of such refusal or failure constitutes a separate offense.

History: 1973 c. 247; 1983 a. 8; 1991 a. 89.

SECTION 41. Initial applicability.

(1) The treatment of section 108.02 (12) (a) of the statutes first applies with respect to employment after December 31, 2005.

(2) The treatment of section 108.02 (15) (j) 7. of the statutes first applies with respect to employment after December 31, 2005.

(3) The treatment of section 108.02 (21e) (intro.) of the statutes first applies with respect to determinations issued under sections 108.09 and 108.10 of the statutes in the first week beginning in January 2006 or, ~~in relation~~ with respect to determinations that are appealed, to decisions issued under sections 108.09 and 108.10 of the statutes in the first week beginning in January 2006.

(4) The treatment of sections 108.04 (1) (b) 1. and 3. (intro.) and (c) of the statutes first applies with respect to suspensions and terminations of employment occurring on the effective date of this subsection.

(5) The treatment of section 108.04 (1) (e) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(6) The treatment of section 108.04 (7) (f) of the statutes first applies with respect to terminations of employment occurring on the effective date of this subsection.

(7) The treatment of section 108.04 (16) (b) and (c) 2. of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(8) The treatment of section 108.05 (3) (a) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(9) The treatment of section 108.09 (2) (bm) and (4s) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(10) The treatment of sections 108.151 (4) (b) and (7), 108.16 (6w) and (6x), 108.22 (1) (b) and (c) and (1m) and 108.225 (1) (a) of the statutes first applies with respect to payrolls distributed for the 2006 calendar year.

(11) The treatment of sections 108.16 (8) (e) 1., (em), (h), (im), (m) and (n), 108.18 (1) (a) and (2) (d) and 108.24 (2) of the statutes first applies with respect to transfers of businesses occurring after December 31, 2005.

(12) The treatment of section 108.17 (2g) of the statutes first applies with respect to reports filed under section 108.17 (2) of the statutes for the 2nd quarter beginning after the quarter which includes the effective date of this subsection.

(13) The treatment of section 108.205 (2) of the statutes first applies to employers of 75 to 99 employees with respect to reports required under section 108.205 (2) of the statutes for the 2nd quarter beginning after the quarter that includes the effective date of this subsection.

(14) The treatment of section 108.205 (2) of the statutes first applies to employers of 50 to 74 employees with respect to reports required under section 108.205 (2) of the statutes for the 6th quarter beginning after the quarter that includes the effective date of this subsection.

(15) The treatment of section 108.22 (2) of the statutes first applies with respect to liabilities existing on the effective date of this subsection.

SECTION 42. Effective date.

(1) This act takes effect on the first Sunday after publication.

(END)

2005–2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–2978/P1ins3
JTK...:...:...

INS 3A : 1

SECTION 1. 108.04 (13) (c) of the statutes is amended to read:

108.04 **(13)** (c) If an employer, after notice of a benefit claim, fails to file an objection to the claim under s. 108.09 (1), any benefits allowable under any resulting benefit computation shall, unless the department applies a provision of this chapter to disqualify the claimant, be promptly paid. Except as otherwise provided in this paragraph, any eligibility question in objection to the claim raised by the employer after benefit payments to the claimant are commenced does not affect benefits paid prior to the end of the week in which a determination is issued as to the eligibility question unless the benefits are erroneously paid without fault on the part of the employer. If, during the period beginning on January 1, 2006 and ending on June 28, 2008, an employer fails to provide correct and complete information requested by the department during a fact–finding investigation, but later provides the requested information, charges to the employer's account for benefits paid prior to the end of the week in which a redetermination or an appeal tribunal decision is issued concerning benefit eligibility are not affected by the redetermination or decision. If benefits are erroneously paid because the employer and the employee are at fault, the department shall charge the employer for the benefits and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are erroneously paid without fault on the part of the employer, regardless of whether the employee is at fault, the department shall charge the benefits as provided in par. (d), unless par. (e) applies, and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are erroneously paid because an employer is at fault and the department recovers the

benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit charges made under this paragraph.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 2. 108.04 (13) (e) of the statutes is amended to read:

108.04 **(13)** (e) If the department erroneously pays benefits from one employer's account and a 2nd employer is at fault, the department shall credit the benefits paid to the first employer's account and charge the benefits paid to the 2nd employer's account. Filing of a tardy or corrected report or objection does not affect the 2nd employer's liability for benefits paid prior to the end of the week in which the department makes a recomputation of the benefits allowable or prior to the end of the week in which the department issues a determination concerning any eligibility question raised by the report or by the 2nd employer. If, during the period beginning on January 1, 2006 and ending on June 28, 2008, the 2nd employer fails to provide correct and complete information requested by the department during a fact–finding investigation, but later provides the requested information, the department shall charge the cost of benefits paid prior to the end of the week in which a redetermination or an appeal tribunal decision is issued regarding the matter to the account of the 2nd employer. If the department recovers the benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit charges made under this paragraph.

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History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197.

SECTION 3. 108.04 (13) (g) of the statutes is created to read:

108.04 **(13)** (g) During the period beginning on January 1, 2006 and ending on June 28, 2008, if benefits are erroneously paid because an employer fails to provide correct and complete information requested by the department during a fact–finding

investigation, the employer is at fault unless the department finds that the employer had good cause for the failure to provide the information.

(7) The treatment of section 108.04 (13) (c), (e), and (g) of the statutes first applies with respect to weeks of unemployment beginning on March 5, 2006.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2978/P1dn
JTK...:...:...
WLJ

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a. As I read current law, there is no separate request by a limited liability company to be treated as a corporation; the department does as the IRS does if the department is provided with proof of the federal treatment. As a result, I have not included reference to a request for treatment.

b. Do you want to make a parallel change in s. 108.068 (8), stats., which relates to limited liability companies that become partnerships or sole proprietorships?

c. There is no initial applicability provision for this change. There was none for the treatment in 2003 Act 197 either. I assume that none is needed.

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a. Because the proposed changes to s. 108.16 (8), stats., do not seem to include a prohibition that could be violated, I construed the relevant violation to be making or attempting to make a false statement or representation. False statements and representations are already prohibited under s. 108.24 (2), stats., but the penalty and legal framework for prosecutions is different because s. 108.24 (2), stats. creates a misdemeanor only.

b. I did not define "knowingly" because it is not defined in s. 108.24, stats. and I think we want the term to be interpreted in the same way that it is interpreted currently. Section 939.23, stats. and reported case law offer guidance in interpreting this relatively common term and I wasn't sure there was a specific need to capture a unique meaning here.

c. Since ch. 108, stats. does not currently use the term "rate year" I used the term "year" instead.

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Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266–6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2978/P1dni
JTK...:...:...

INSDIA

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a. We seem to be making a temporary exception to a rule that is not clearly set forth in the first instance. I would take another look at this proposal to see if we can't clearly set forth the general rule and then set the exception beside it.

b. The language fixes the date on which benefit charges stand as paid as the date of issuance of a redetermination or an appeal tribunal decision. If in a given case there are both a redetermination and an appeal tribunal decision, which date would control?

c. The description of the proposal says that "The proposed change would also remove the agent's right to represent the employer should the agent repeatedly fail to provide the complete and correct information when requested." Since this item was not included in the language attached to the proposal, I did not include it in the draft. *

d. The description of the proposal says that it should be effective several months after publication. The draft applies the changes to weeks of unemployment commencing on March 5, 2006. Substitute another date if you wish.

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FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2978/P1dn
JTK:wlj:jf

July 27, 2005

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Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266–6778

Kuesel, Jeffery

From: Smith, Thomas E - DWD UI
Sent: Monday, August 15, 2005 10:43 AM
To: Kuesel, Jeffery
Subject: Dept. Law Change Proposal D05-41

Attachments: D05-41 Unified Final - Levy fixes.doc

Jeff: Attached is the analysis which I have been holding in hopes of rewriting. However, because the analysis is already in the green book which has been distributed to our own staff and the UIAC members, I will just tell you what we need.

1. The levy fee in 108.225(20) needs to be made an addition to the debt, not a deduction from the debt by the 3rd party. Under the current wording there is always a hanging $5 fee and our books show a $5 unpaid debt at the end of the process.

2. The levy should remain at $5 in cases where the debt is paid in full by a single payment from the 3rd party, but where there are multiple payments under the same levy, i.e., a continuous levy as described in 108.225(15), the levy fee is changed to $15.

Let me know if you have any questions.

Thomas E. Smith
Attorney
Bureau of Legal Affairs
UI Division
Department of Workforce Development
(608) 266-9641

)05-41 Unified Final - Levy fi...

June 2005 **D05-41**
Proposed by: Department
Prepared by: Nadine Konrath

ANALYSIS OF PROPOSED UI LAW CHANGE

Clarification and Increase third party levy fee.

INTRODUCTION

Levy by definition means to impose or collect. Wisconsin Statutes defines levy as "all powers of distraint and seizure. Basically a levy is to hold the property in the hands of a third party of a debtor to repay a debt.

Collections uses a levy if a debtor ignores or fails to repay a debt owed for unemployment insurance. The purpose of the levy is to seize any property in the hands of a third party. The property to be recovered may be all real and personal property, including but not limited to wages, salary, commission, and bonus or otherwise, bank accounts, rents, insurance proceeds, contract payments and retirement accounts.

A levy can be a single action against the debtor, or continuous until the debt is paid in full, or an action based on time limits. If the levy is based on an installment agreement and exceeds one year in length, the cost of administering the levy can be costly to the third parties.

An alternative to the levy is a garnishment action. However they are very costly to the debtors as well as the creditors. The minimum costs for a garnishment could cost $131 plus additional small claims court fees. These fees would occur every 13 weeks until the debt in then paid. In contrast our levy action is very cost effective of all parties involved,

DESCRIPTION OF PROPOSED CHANGE

Current law states "Any 3rd party is entitled to a levy fee of $5 for each levy in any case where property is secured through the levy. The 3rd party shall deduct a fee from the proceeds of the levy."

Levies are issued to the third party for an amount that includes the principal balance of the debt and costs associated with collection of the debt. The amount listed on the levy does not include the $5 cost of the levy that the third party is entitled to by law.

In cases where payment in full is collected by the third party, the law allows them to deduct the $5 fee from the proceeds or "debt". This causes confusion because a $5 balance remains on the debtor's account with the department. Therefore, the levy may not be released and warrants are not satisfied until all costs are collected.

Because the $5 fee remains on the account, the department may not release the levy because the debt would not be satisfied until the debt and expenses of the levy are fully paid. Releasing the levy would leave a $5 hanging debt due. In some cases, the $5 is

written off to close the account and concentrate on higher dollar values to collect, thus losing collectable dollars.

This request is to add an additional charge for levy payment plans where the amount levied is collected through multiple payments by the third party. The change would increase the levy fee to $15.00 for levies where an installment plan is accepted.

There is also a need to add clarifying language to allow a third party to retain a fee or fees for a levy collected in full or through an installment plan *in addition to* the amount due the department. This would separate the department's levy amount and the third party's fees for processing the levy, essentially reducing confusion and simplifying collection processes.

PROPOSED STATUTORY LANGUAGE

108.225(20). Any 3rd party is entitled to a one time levy fee of $5 for each levy secured in full by a one time payment or a $15 fee for each levy installment plan where property is secured through a continuous levy. The 3rd party shall charge the fee in addition to the debt due to the department to the debtor."

REASONS FOR CHANGE

This change clarifies that the levy fee the third party is to charge is in addition to the expenses of the levy incurred by the department. The clarification than flows correctly with 108.225(7) Use of Proceeds and all monies retained and remitted to the department for the debtors account is applied first to the expenses of the proceedings and then against the liability in respect to which the levy was made. Therefore all UI debt is collected and to the third party is held harmless for their involvement in collecting the debt.

Additionally, levies that extend beyond one payment (commonly a wage levy) require extra work and additional costs may be incurred by the third parties. The continuous levy require the third parties to monitor balances to ensure they do not under-collect or over-collect, and it requires additional work and expenses for them. Many third party payments are not automated and additional checks and postage are required. These costs can accumulate quickly for a third party of which they are not compensated for their expenses. This $15 fee would be past on to the debtor and would begin to make the third party whole for any costs incurred in a continuous levy action.

The Department of Revenue and IRS charge $20 and $43 respectively for installment agreements of which Unemployment Insurance does not charge this type of fee. Garnishment actions also are not used for collection of a debt since they can cost the debtor additional expenses including a $15 garnishee fee. This change is still cost effective for the debtors.

BRIEF HISTORY AND BACKGROUND OF CURRENT PROVISION:

Current law was enacted in approximately 1989 and simplified collection procedures for collecting delinquent debt and benefit overpayments. This administrative process replaced repeated garnishment attempts. The $5 fee has not increased since 1989.

With increasing inflation costs, it is appropriate to evaluate and increase the third parties levy fee where additional expenses are incurred to assist in collecting UI debt.

EFFECT OF THE PROPOSED CHANGE:

- ✓ Collection revenue increase
- ✓ Increase efficiency within levy process
- ✓ Reduced administrative costs to process levies.
- ✓ Reduces confusion with Third Party Contacts
- ✓ Consistent with law change proposal for public assistance Cost of Levy 49.195(3)(f)

Over 8,000 accounts are levied annually and costs incurred continue to climb for both the third parties and for UI. In addition UI is continually experiencing an increase using this collection method and costs would continue to increase as well.

Policy: No department change in policy.

Administrative Impact: Employers and Claimants: No additional work. The cost of a levy action would increase to $15 from $5 for installment plans only.
Third Parties: Holds harmless for collection of UI debt.

Division: No impact on staff.
Consistent with strategic plan.
No administrative costs to the division will be incurred.

Equitable: There is an additional cost to the employers or claimants. However the additional cost is minimal.

Fiscal: No impact on the reserve fund.

STATE AND FEDERAL ISSUES

Chapter 108: No other provisions will be affected as a result of this change.

Rules: No administrative rules are necessary or changes to administrative rules.

Conformity: No conformity issues arise from this change.

PROPOSED EFFECTIVE/APPLICABILITY DATE:

Change is implemented upon enactment. All levies issued after enactment date would conform to the increased levy fee for installment plans only.

DEPARTMENT'S RECOMMNEDATION TO THE UCAC is to increase the third party levy fee.

Date: June 8, 2005
Proposed by: Department
Prepared by: Thomas E. Smith

D05-63

ANALYSIS OF PROPOSED UI LAW CHANGE

ALLOW ADMISSION OF COED REPORTS WITHOUT CERTIFICATION BY AN EXPERT

1. Description of the Proposed Change. Create a statutory provision which makes department COED reports admissible as prima facie evidence in UI hearings without need for certification by an "expert".

2. Proposed Statutory Language

   108.09(4n) A report created by a department employee, including an administrative law judge, using the department's Conditions of Employment Database system (COED) constitutes prima facie evidence as to the matter contained in the report in any appeal tribunal hearing under this chapter, if:

   (a) The parties have been given an explanation of the COED system and COED reports prior to admission of the report.

   (b) The parties have been given the opportunity to review and object to the COED report, including the accuracy of the information used in creating the report, prior to admission.

   (c) The report sets forth all of the information used in creating the report and contains information which can identify the department employee who created the report.

3. Proposer's Reason for the Change. The reason for the change is to provide for the admissibility of COED reports under a statute specific to that document rather than under a statute not intended for that purpose and which requires the department to rely on the fiction of "expert" certification.

   When the department began using the COED system in the summer of 1997 it needed to find a way to make the reports admissible evidence in hearings to avoid hearsay problems. An existing statute which made "certified expert reports" admissible was used to solve the problem. The COED report was titled as a "certified expert report" and was issued over the machine signature of Terry Ludeman. The department has always intended to create a COED specific admissibility provision and initially decided to make it part of an administrative rule covering COED reports. However, since the department also now wants to redesign the COED report to provide more information and to make it easier to understand for employers and claimants and, since at this point in the UI bill cycle a law change could be in effect more quickly

than a rule, the timing is right to do the redesigned report and the admissibility provision within a much shorter time span.

4. Brief History and Background of the Current Provision. Currently the department uses Wis. Stat. §108.09(4m) as authority for the admissibility of COED reports. That provision has been in the UI law since 1949 and in its current form says:

> **Reports by experts.** The contents of verified or certified reports by qualified experts presented by a party or the department constitute prima facie evidence as to the matter contained in the reports in any proceeding under this section, insofar as the reports are otherwise competent and relevant, subject to such rules and limitations as the department prescribes.

This language is designed to cover reports by experts such as health care providers or drug testers where a human being with a certain expertise actually makes an examination or conducts a test and prepares a report using that expertise.

In the COED situation, the human expertise has been transferred to a computer program which is given case specific information and which applies that information and the information in a base of established data to produce a conclusion. The report itself is not prepared by person expert in the subject matter of the report. Rather, the reports are created by department adjudicators, hearing office case analysts and even ALJs, who simply enter the known information for a given case for a given type of report and then click a mouse button on a computer to produce the report.

5. Effects of the Proposed Change.

   a. Policy. If enacted, this proposal would accomplish the department's goal of providing for the admissibility of COED reports under a specific provision rather than via the "expert" provision which does not fit the COED situation.

   b. Administrative Impact.

      (1) Employers and Claimants. The redesigned report along with the additional explanation of COED required by the proposal will help both employers and claimants to better understand the COED system and the reports.

      (2) Department. The proposal will eliminate the need to identify an "expert" to certify the report. Nothing else will change. Adjudicators, hearing office analysts and ALJs will continue to create reports as they are doing now.

   c. Equitable. There is no gain or loss of benefits and no gain or loss to employers or the UI trust fund.

d. Fiscal. No fiscal effects.

6. State and Federal Issues.

a. Chapter 108. No other provisions of Ch. 108 are affected by this proposed change.
b. Rules. The department will continue work on the remainder of the COED administrative rule.
c. Conformity. There are no conformity issue.

7. Proposed Effective/Applicability Date. Same as general effective date of the UI bill.